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AMENDMENTS OFFERED BY MR. SEIBERLING

TO

AMENDMENT #1 OFFERED BY MR. SEIBERLING
(DISCIPLINARY PROCEDURES)

(1) section 7801(c) ---- definition of "employee"

On page 2 of the amendment, in proposed section 7801(c), immediately after "United States Code" insert "and 'an employee paid from the appropriation of the office of the President' as defined in section 7324(d)(1)(a) of title 5, United States Code"

(2) section 7803(e) ---- right to request or petition for review

On page 6 of the amendment, in proposed section 7803(e), immediately after "Constitution of the United States" insert "or when the agency or a court of the United States has found that the claim arises under the Constitution of the United States"

✓ (3) section 7804(b) ---- enjoining release of report & review of report

On pages 6 of the amendment, in proposed section 7804(b), strike out ", unless public release is enjoined pursuant to subsection (c)"

On page 7 of the amendment, strike out proposed section 7804(c) and insert in lieu thereof the following:

"(c) A person requesting such inquiry and a person whose conduct is the subject of an administrative inquiry under this section may, within 60 days after service upon him of the report of the inquiry, petition a district court of the United States to review the report. The court may deny the petition or set aside the report and remand it for further consideration if it finds the report to be arbitrary and capricious or finds material factual determinations to be unsupported by substantial evidence on the basis of its review of the report and the statement of findings."

✓ (4) section 7806(b) ---- Attorney General approval of Civil Service Commission regulations

On page 8 of the amendment, strike out proposed section 7806(b) and redesignate succeeding subsections accordingly.

AMENDMENT #3 TO H.R. 9219
OFFERED BY MR. SEIBERLING

(election of remedies as to
presidential appointees and
former employees)

section 5
section 6

en bloc:

(1) On page 5, line 19, immediately after "employee.", insert the following new sentence:

"In no event shall a tort claim arising under the Constitution of the United States by an individual who is no longer an employee of the Government at the time the claim is presented to a Federal agency under this chapter and by an appointee of the President as defined in chapter 78 of title 5, United States Code, lie against both the employee in his individual capacity and against the United States under section 2675 and section 1346(b) of title 28, United States Code."

(2) On page 5, line 25, AND ON PAGE 6, LINE 15,
after "employee", insert the following:

", other than an employee who is no longer an employee of the Government at the time a claim is presented to a Federal agency under this chapter and other than an appointee of the President as defined in chapter 78 of title 5, United States

AMENDMENT #1 TO H.R. 9219
OFFERED BY MR. SEIBERLING

(disciplinary
procedure)

On page 11, immediately after line 12, add the following new
section:

SEC. 12. Title 5, United States Code, is amended by adding
immediately after Chapter 77 a new chapter 78 containing a table
of contents and new sections 7801, 7802, 7803, and 7804, 7805,
7806 and 7807 as follows:

"CHAPTER 78--EMPLOYEE DISCIPLINE

"Sec.

"7801. Definitions

7804. Administrative Inquiries Generally.

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"7804. Conduct of Former Employees and Presidential Appointees.

"7805. Individuals and Bodies Conducting Inquiries and Review.

"7806. Regulations.

"7807. Miscellaneous.

Section 7801. Definitions

For the purposes of this chapter:

(a) "Person means any person with rights recognized under the Constitution of the United States;

(b) "Federal agency" means a Federal agency, as defined in section 2671 of title 28, United States Code, which employs or employed an "employee" defined in subsection (c) of this section;

(c) "Employee", unless otherwise described, means a present "employee of the Government" as defined in section 2671 of title 28, United States Code;

(d) "Appointee of the President" means an employee of the Government, other than a uniformed member of the Armed Forces or Coast Guard, a Public Health Service officer, or a Foreign Service officer, appointed by the President with the advice and consent of the Senate; and

(e) "Disciplinary action" means removal, suspension without pay, reduction in rank or pay, admonishment or reprimand, or transfer, for such cause as will promote the efficiency of the service.

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(a) A person who obtains a monetary recovery from the United States on a tort claim under section 2675 or section 1346(b) of title 28, United States Code, arising under the Constitution of the United States, may within 60 days thereafter request, as provided herein, an administrative inquiry of the conduct alleged or found to have given rise to the claim.

(b) A person who brings an action under section 1346(b) on a tort claim arising under the Constitution of the United States may, not earlier than 60 days nor more than 120 days thereafter, request, as provided herein, an administrative inquiry of the conduct alleged to have given rise to the claim.

(c) A federal agency which undertakes to conduct an administrative inquiry of the conduct of one of its employees, may in its discretion invite a person believed to have been adversely affected by the conduct to participate in the administrative inquiry to the extent provided by sections 7803(b) and (e).

(d) A person who has requested an administrative inquiry under subsection (b), or who has been invited to participate in an administrative inquiry under subsection (c), may not subsequently request an administrative inquiry into the same conduct under subsections (a) or (b).

Section 7803. Conduct of Employees of the United States

(a) A request under section 7802(a) or (b) for an administrative inquiry with respect to the conduct of an employee of the United States shall be made to the head of the federal agency or his designee, by which the employee is employed. The request and shall be accompanied by a written statement, certified and subscribed as permitted by section 1746 of title 28, of such facts

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are known to the person making the request of the employee which is alleged to have violated such person's rights under the Constitution, and a request may be made with respect to the conduct of an employee whose identity is unknown if the request sets forth other information sufficient for the commencement of a hearing.

(b) The inquiry shall be conducted without unnecessary delay by the head of the agency or his designee. If after preliminary inquiry, the head of the agency or his designee finds that the matter is so unsubstantiated as not to warrant further inquiry, he may, upon notice to the person under this subsection, terminate such inquiry. A hearing shall be held with respect to the conduct of the employee if there is a genuine, material and substantial dispute of fact which can be resolved with sufficient accuracy only by the introduction of reliable evidence in a hearing and the decision of the agency in the matter is likely to depend on the resolution of such dispute. In his sole and unreviewable discretion the head of the agency or his designee, may give to a person in the event of hearing the opportunity to examine and cross-examine witnesses, and to suggest witnesses to be called and documents to be produced. The head of the agency or his designee shall determine whether disciplinary action is warranted, issue a statement of findings and, if appropriate, state the nature and degree of disciplinary action taken, and notify the person of the action taken by the agency and the reasons therefor.

(c) Except as provided by subsection (e), within 60 days after notification of the action taken by the agency, or if no final agency action has been taken within one year after

review by the appropriate individual or body described in

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section 7805. The individual or body conducting the administrative review shall determine on the record whether the action taken by the agency was reasonable. If no final agency action has been taken, or if it is unable to conduct such review because it finds the record inadequate, it may remand to the agency for further proceedings or it may, in its discretion, supplement the record by taking additional evidence. The final decision shall be transmitted to the agency, the employee and the person requesting the review, and shall include a statement of findings and a recommendation, which except as provided by section 7807(d) shall be binding on the agency, with respect to disciplinary action against the employee.

(d) Except as provided by subsection (e), within 60 days after the issuance of a final decision on an administrative review, the person requesting the inquiry may petition for review of the final decision by a district court of the United States unless the conduct involved is that of a uniformed member of the Armed Forces as described in section 101(4) of title 10, United States Code, in which event he may petition for review by the United States Court of Military Appeals. The Court may deny the petition, affirm the decision, or set aside the decision and remand for further proceedings if it finds the decision to be arbitrary or capricious, or finds material factual determinations to be unsupported by substantial evidence, on the basis of its review of the decision, the reasons therefor, and the recommendation with respect to disciplinary action. The court's review shall be

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protected

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to the national security, national defense, or foreign affairs, or in the court's own discretion if it determines that in camera review is necessary.

(e) The right to request an administrative review under subsection (c) and to petition for judicial review under subsection (d) shall not be available to a person who has not obtained a monetary recovery from the United States on a claim under section 2675 or in a suit under section 1346(b) of title 28, United States Code, arising under the Constitution of the United States, unless the agency which conducted this inquiry under section 7803(b) permitted a person to participate and so consents in its sole and unreviewable discretion.

Section 7804. Conduct of former Employees and Presidential Appointees.

(a) A request under section 7802 for an administrative inquiry with respect to the conduct of a former employee of the United States or a present or former appointee of the President shall be made to the appropriate individual or body described in section 7805.

(b) The individual or body conducting an administrative inquiry under this section shall conduct such inquiry without unnecessary delay and may in its discretion hold a hearing. Such individual or body shall prepare a written report of the results of the inquiry which shall include a statement of findings. Such report shall be served promptly on the person whose conduct is the subject of the inquiry and shall be made public not less than 35 days thereafter, unless public release is enjoined pursuant to subsection (c). Prior to public release of the report, the former employee or present

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(c) A person whose conduct is the subject of an administrative inquiry under this section may, within 30 days after service upon him of the report of the inquiry, petition a district court of the United States to review the report and enjoin its public release on the grounds that it is arbitrary or capricious.

An administrative inquiry under section 7804 or an administrative review under section 7803(c) shall be conducted by:

(b) The Secretary of the Department in which the United States Coast Guard is operating, or his designee, with respect to a member of the Coast Guard;

(d) The head of an agency with a personnel system under the Public Health Service Acts, as amended (42 U.S.C. 201 et seq.), or designee, with respect to an officer or employee of the Public Health Service;

(e) A body designated by the President within sixty days of enactment of this Act, other than the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, the

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an officer or employee while engaged in intelligence activities; or

(f) The Civil Service Commission, or its designee, in any other case.

(g) A designee of a Secretary agency head or entity described in this section, who conducts an administrative review shall not be responsible to or subject to the supervision or direction of any designee of the agency who conducted the administrative inquiry and review.

(h) No person who has been an employee of the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, the national intelligence components of the Defense Department or the National Security Council or its component parts, during the preceeding two years may be appointed to serve on the body designated to conduct an administrative review under subsection (c).

Section 7806. Regulations.

(a) Within 90 days after enactment of this chapter, the individuals and bodies described in section 7805 shall issue such regulations as are necessary and appropriate for the implementation of sections 7802-7805.

(b) Regulations issued by the Civil Service Commission under this section shall be approved by the Attorney General.

(c) The head of each federal agency subject to the administrative review provisions of section 7803(c) shall comply

the regulations issued by the particular administrative body designated under subsection (c) of section 7803(b), and shall 60 days after the effective date of such regulations, issue rules, regulations and instructions not inconsistent therewith.

(d) For purposes of promulgating regulations pursuant to this section, the body designated under subsection (c) of section 7805 shall be an "agency" of the "government" within the meaning of 5 U.S.C. 551 (The Administrative Procedure Act).

(e) All regulations issued under this section shall be published for public comment and subject to judicial review under chapters 5 and 7 of this title.

Section 7807. Miscellaneous.

(a) Nothing in this chapter shall affect the rights of an employee to appeal or to seek review or other means of redress of any disciplinary action taken against him which he would have under other provisions of law. Provided, however, that an employee, who is the subject of a disciplinary action recommended by the Civil Service Commission pursuant to subsection 7803(c), shall not be required by any other provision of law to take an appeal to the Commission prior to seeking judicial review of that action.

(b) An employee who is not entitled under other provisions of law to seek administrative or judicial review of disciplinary action

action against him may, if an administrative review is conducted under **Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110075-1** give evidence or testimony if a hearing is held, and, to the extent provided by section 7803(d), may petition for judicial review of a final decision if any disciplinary action recommended under subsection 7803(c) is greater than that proposed by the employing federal agency.

(c) Nothing in this chapter shall affect the availability of defenses which an employee may raise in any administrative or judicial proceeding.

(d) Nothing in this chapter shall require a federal agency to delay taking disciplinary action against an employee, or empower the Civil Service Commission to reduce the severity of disciplinary action taken by an agency against an employee who would not have a right to seek the Civil Service Commission's review of such action under other provisions of law.

(e) Nothing in this chapter shall authorize a federal agency to delay or refrain from taking disciplinary action against an employee in the absence of a request filed under section 7802(a) or

(f) On or before September 30 of each calendar year, the President shall submit to the Speaker of the House and the President of the Senate a report for the preceeding year separately listing for each Federal agency the number of administrative inquiries undertaken pursuant to this chapter, a brief description of the nature of the inquiries, any administrative or judicial review of and the ultimate disposition.

(g) Notwithstanding any provision of law to the contrary, any party in an action for judicial review of agency action under section 7803(d) shall be entitled to recover reasonable attorneys'

fees, fees and costs of experts, and other reasonable costs of litigation, including taxable costs, incurred during judicial review if the court affords such person the relief sought in substantial measure. Reasonable attorneys' fees and other costs of litigation awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished."

